IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2333 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE LAND DEVELOPMENTCORPORATION

Versus

NATHUBHAI S QURESHI

Appearance:

1. Special Civil Application No. 2333 of 2002

MR HS MUNSHAW for Petitioner No. 1

MR JT TRIVEDI for Respondent No. 1

MR BJ TRIVEDI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/04/2002

ORAL JUDGEMENT

#. Heard Mr.H.S.Munshaw, learned advocate appearing on behalf of the petitioner Corporation and Mr.B.J.Trivedi with Mr.J.T.Trivedi, learned advocates for respondent workman.

#. Rule. Mr.B.J.Trivedi, learned advocate for respondent waives formal service of RULE on behalf of the respondent workman.

#. The petitioner Corporation has challenged the award passed by the labour court, Kalol in Reference No.132 / 1987 dated 7th February, 2001, wherein the labour court has granted reinstatement with continuity of services with full backwages with effect from 19th November, 1992. Learned advocate Mr.Munshaw on behalf of the petitioner Corporation has submitted that the respondent workman was appointed on 1st June, 1984 and worked upto 30th July, 1986 as Watchman on daily wager and thereafter, he left the work at his own and not reported for duty and it amounts to abandonment of services and therefore, it was not termination by the petitioner and workman has left the job. Therefore, the labour court has committed error in considering such abandonment as termination and required compliance of Section 25-F of the I.D.Act, 1947 and on that basis granted reinstatement with full backwages with effect from 19th November, 1992 because of the workman concerned has abounded services and not reported for work. Therefore, it was compelling circumstances for the petitioner to appoint another Watchman in his place that does not amount to violation of Section 25-H of the I.D.Act, 1947 as it was not termination by the petitioner. Therefore, the labour court has not properly appreciated the evidence which was produced by the petitioner and therefore, the labour court has committed the error in granting the relief to the respondent.

#. Learned advocate Mr.Brijesh Trivedi for respondent workman has submitted that in fact the respondent workman was appointed on 19th January, 1982 and this fact has been admitted by the witness of the other side. Mr.Trivedi, learned advocate has further submitted that the witness of the other side Shri Krushnkant Bhikhabhai in his cross examination has admitted that fact that the service of the respondent workman has been terminated by the petitioner. Therefore, it is not case of abandonment of service but it was clear case of termination rightly appreciated by the labour court. It is further submitted that the labour court has rightly observed that provisions of Section 25-F of the I.D.Act has not been complied with by the petitioner and therefore, the labour court has rightly set aside the termination and granted relief in favour of the respondent workman. Learned advocate Mr.Trivedi has further submitted that the labour court has taken due care to grant full backwages from the

date of deposition of the respondent workman from 19th November, 1992. Therefore, according to respondent, it is very reasonable award passed by the labour court which does not require any interference of this Court while exercising the powers under Article 226 and 227 of the Constitution of India.

#. I have considered submissions of the learned advocates for the parties. The respondent workman has challenged termination before the labour court by raising the Industrial Dispute which was referred for adjudication on 16th September, 1987. Thereafter, the respondent workman has filed statement of claim vide Exh.6 and the respondent also filed written reply vide Exh.17. The respondent workman has produced the documents vide Exh.8/1 and 8/2 and the petitioner has produced documentary evidence vide Exh.21 and then the respondent workman was examined vide Exh.9 and the petitioner has examined one Rameshchandra Chintamani vide Exh.25 and one Mangalsingh Sardarsingh vide Exh.26 and one Shri Pranjivan Thakarsibhai at Exh.32. Thereafter, both the parties have closed their evidence and then labour court has considered the merits of the matter. In respect of the contention raised by the petitioner that the respondent workman has abandoned the service, the labour court has rightly appreciated the fact that if the workman has not reported for duty after period of two years as per the stand of the petitioner, then they should have sent some letters calling the workman concerned for duty or they might have called for explanation of the workman concerned for remaining absent from but no such procedure has been followed by the petitioner and therefore, the labour court has come to conclusion that no documentary evidence of muster register produced by the petitioner to justify that the workman had abandoned the services of the petitioner. Therefore, considering this aspect and the finding recorded in this connection and the period which was admitted by the petitioner from 1st June, 1984 to 31st July, 1986 which is not disputed even though the respondent workman has completed 240 days continuous service. The respondent workman has submitted that he was appointed on 19th January, 1982, however, the date of joining in not material question as the workman has completed 240 days continuous service which has been established from the admission of the petitioner witnesses and undisputedly, Section 25-F has not been complied with by the petitioner. Therefore, in place of respondent workman one another Watchman was appointed and hence, the labour court has rightly set aside the termination order.

#. So far, in relation to the question of backwages which has been granted by the labour court with effect from 19th November, 1992, the matter is required to be examined by this Court. The labour court has granted full backwages with effect from 19th November, 1992. The labour court has relied upon oral evidence of the respondent workman that he remained unemployed during the interim period and inspite of his efforts, the workman could not get the job and moreover,the other side has not proved gainful employment of the respondent workman and therefore, the labour court has granted full backwages of the interim period. It is necessary to note that Reference was pending before the labour court from 1987-01 nearly about more than thirteen years on account of no fault on either side. The petitioner is public body and workman has completed two years of service according to the petitioner, whereas four years of service as per respondent workman. However, considering two and / four years of service, the workman is getting eight years backwages from the petitioner Corporation which is public body. Another aspect that it can safely be presumed that the respondent workman might not have remained totally unemployed but he might have done some miscellaneous work and therefore, considering this aspect, according to my opinion, full backwages which has been awarded by the labour court with effect from 19th November, 1992 is required to be reduced. This aspect has been taken into account in similar situation by the Apex Court in reported decision in case of MANAGEMENT OF M.C.D. VS. PREM CHAND GUPTA, AIR 2000 SC 454 in case of Management of The relevant observations made in para-18 and 19 are quoted as under :-

"18. We have now reached the stage for considering appropriate relief to be granted in the light of our findings on Point No.2. Once it is held that termination of the respondent workman on 29-4-1966 was null and void being violative of Section 25-F of the I.D.Act, the logical consequence would be that he would be entitled to be reinstated in service with continuity and in normal course would be entitled to full backwages. However, in our view on the peculiar facts of this case, it will not be appropriate to grant full backwages to the respondent workman even though he will be entitled to be reinstated in service of the appellant Corporation with continuity and all further consequential benefits on that score, save and except the grant of full backwages, as

indicated herein below.

19. The reasons for non granting full backwages from the date of his termination of 29-4-1966 till actual reinstatement pursuant to the present order can now be indicated. Firstly, for no fault of the contesting parties, the litigation has lingered on for more than three decades. The termination order was as early as on 29-4-1966 and after 33 years and more it is being set aside. To saddle the appellant Corporation and its exchequer, which is meant for public benefit, with full backwages for entire period would be too harsh to the appellant corporation. It is the delay in disposal of cases in the Courts that has created this unfortunate situation for both the sides. Respondent workman is also not at fault as he was clamoring for justice for all these years. However, this delay in Court proceedings for no fault of either side permits us not to burden the appellant corporation, being a public body, with the full backwages for the entire period of respondent workman's unemployment, especially when for no fault of either side actual work could not be taken from the respondent workman by the appellant corporation. It is true that the respondent workman was always willing to work but he could not be permitted to work so long as the termination order stood against him. The Labour Court as well as the learned single Judge upheld that order. Only the Division Bench set aside that order. This Court at SLP stage itself while granting leave stayed reinstatement order on 17-11-1997. Two more years since elapsed during the pendency of this appeal before this Court. All these factors together point in the direction of not saddling the appellant corporation, a public body, with the burden of entire full backwages to be granted to the respondent workman after the passage of 33 years since his order of termination. The second reasons is that the respondent workman for all these years could not have remained totally unemployed though there is no clear evidence that he was gainfully employed and was so well off that he should be denied complete backwages. But keeping in view the fact that for all these long years fortunately the respondent workman had survived and has still tow more years to reach the age of superannuation as we are told, not granting him full backwages on

the peculiar facts of this case, would meet the ends of justice. We, therefore, following order:

[1] & [2] .....

[3] So far as the backwages are concerned, the impugned order of the High Court is modified by directing that the respondent workman will be entitled to get 50 % backwages from the date of his termination i.e. from 29-4-1966 till his actual reinstatement in service of the appellant corporation with the continuity of service. ..... "

#. In view of above observations of the Apex Court and looking to the facts of the present case so also the fact that the petitioner is public body, according to my opinion, if full backwages granted by the labour court is reduced to 50 % of the interim period with effect from 19th November, 1992, will meet the ends of justice between the parties. Accordingly, the award qua backwages is required to be modified.

#. In the result, present petition is partly allowed. Award passed by the labour court, Kalol in Reference No.132 / 1987 dated 7th February, 2001 granting reinstatement with continuity of service is not disturbed by this Court and the same remains intact. However, qua backwages in respect of full backwages, it is reduced to 50 % from 19th November, 1992 till the date of award i.e. 7th February, 2001.

#. Learned advocate Mr.Trivedi for respondent workman has requested for issuance of some suitable direction on the petitioner so that the respondent workman can be reinstated within some reasonable time and further requested to stipulate some time limit for payment of the backwages. Considering the submissions of the learned advocate Mr.Trivedi, it is directed to the petitioner to reinstate the respondent workman within period of one month from the date of receiving the copy of this order and to pay 50 % backwages from 19th November, 1992 till 7th February, 2001 within period of two months from the date of receiving the copy of this order. The petitioner Corporation is further directed to pay full wages from 7th February, 2001 till the date of his actual reinstatement in service within period of three months from the date of receiving the copy of this order.

Rule is made absolute to the extent indicated above. No order as to costs. Direct Service is permitted

to respondent.

Date : 4-4-2002 [H.K.Rathod, J.]

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